

REMARKS

No claims have been amended. No claims have been canceled. No new claims have been added. Claims 25-27 remain pending in the application.

Objections/Rejections *Under 35 U.S.C. §102 and §103*

1.0 *The Examiner has rejected claims 25-27 as anticipated by Franzen (United States Patent No. 4,062,067).*

SUMMARY OF CITED REFERENCES

Franzen (United States Patent No. 4,062,067) discloses protective headgear (11) having a horizontal band (12) attached to a vertical band (14) at a single point by a suitable attachment mechanism such as a snap fastener (*i.e.*, a male snap half (26) on the vertical band (14) and a female snap half (28) on the horizontal band 12), sewing, riveting etc. [Column 2, Lines 18-24].

SUMMARY OF CLAIMED INVENTION

A First Aspect of the Present Claimed Invention (claims 25-27) is a protective headguard with overlapped inner and outer layers attached at a pair of diametrically opposed points of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through these points of attachment.

A Second Aspect of the Present Claimed Invention (claim 27) is a protective headguard in accordance with the First Aspect of the Present Claimed Invention wherein the inner and outer layers are biased towards a standard position relative to one another.

LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Kloster Speedsteel AB et al. v. Crucible Inc. et al.*, 230 U.S.P.Q. 81, 84 (Fed.Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. *See, Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the “exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference.” *Atlas Powder Co. v. E.I. duPont De Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

FRANZEN DOES NOT DISCLOSE EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION.

The First Aspect of the Present Claimed Invention (claims 25-27) is directed to protective headgear that attaches inner and outer layers at a pair of diametrically opposed points of attachment. In contrast, Franzen discloses protective headgear with horizontal and vertical bands that are attached at a single point of attachment. The Examiner’s reference to each half of the snap (*i.e.*, the male snap half (26) and the female snap half (28)) as separate points of attachment is misplaced. The snap halves (26 and 28) form but a single point of attachment.

Assuming for the sake of argument that each snap half (26 and 28) can be considered as separate points of attachment, Franzen still fails to disclose each and every claim limitation as these two “points of attachment” are not diametrically opposed. The term “diametric” is defined by the Merriam-Webster dictionary as “along the diameter” and “completely opposed: being at opposite extremes”. The snap halves on the headgear of Franzen are located next to one another, not diametrically opposed. Locating the snap halves at opposite extremes on the diameter of the bands would render the snap halves useless. Clearly, Franzen does not disclose, teach or suggest diametrically opposed snap halves.

Withdrawal of this rejection is respectfully requested.

The Second Aspect of the Present Claimed Invention (claim 27) is a protective headguard in accordance with the First Aspect of the Present Claimed Invention wherein the inner and outer layers are biased towards a standard position relative to one another.

Oddly, the Examiner contends that even though Franzen does not disclose, teach or suggest biasing the vertical and horizontal bands towards a standard position, Franzen anticipates the Second Aspect of the Present Claimed Invention claimed because Franzen is “*capable of* being biased”. First, the Examiner’s acknowledgment that Franzen does not disclose the claim limitation of biasing the layers (i.e., the vertical and horizontal bands) towards a standard position serves, on its own, to obviate the anticipation rejection as it is a clear admission that Franzen does not disclose each and every element of the claimed invention.

Furthermore, assuming for the sake of argument that the Examiner intended this rejection to be one of obviousness rather anticipation, the rejection still cannot stand. The fact that a reference can be modified to attain a claimed invention does not render the resultant modification obvious unless the results would have been predictable to one of ordinary skill in the art. *See*, M.P.E.P. §2143.01 III [FACT THAT REFERENCES CAN BE COMBINED OR MODIFIED MAY NOT BE SUFFICIENT TO ESTABLISH *PRIMA FACIE* OBVIOUSNESS]. The Examiner has established no such predictability here.

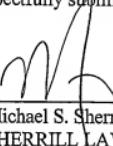
Withdrawal of this rejection is respectfully requested.

CONCLUSION

Applicant respectfully submits that all pending claims (claims 25-27) are in condition for allowance.

Respectfully submitted,

Date 14 Dec 88

By 

Michael S. Sherrill, #32,302
SHERRILL LAW OFFICES, PLLC
4756 Banning Avenue, Suite 212
White Bear Lake, Minnesota 55110-3205
(651) 426-2400